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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Venezuela submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

Letter dated 26 December 2001 from the Permanent Representative of Venezuela to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: Spanish]

Further to my communication of 8 November 2001, I have the honour to write to you in implementation of the provisions of Security Council resolution 1373 (2001) of 28 September 2001, to transmit the report requested in paragraph 6 of that resolution (see annex).

The Bolivarian Republic of Venezuela condemns terrorism in all its forms and manifestations and is totally committed to the fight that the international community has undertaken against that scourge. Accordingly, Venezuela reiterates its firm commitment to implement the provisions of resolution 1373 (2001).

We believe that the fight against terrorism must be guided by the basic principles of international law and we agree that strengthening the relevant legal framework is of fundamental importance. In that context I am pleased to report that we are taking the necessary steps to expedite the signing of the international legal instruments to which we are not yet party.

I should like to point out, in this connection, that Venezuela is a party to the following international instruments on terrorism.

1. OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971 at the third extraordinary session of the General Assembly of the Organization of American States.

2. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979 at its thirty-fourth session.

3. Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed at Montreal in 1971.

4. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963.

5. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970.

In addition, Venezuela has signed but has not yet ratified the following instruments:

1. International Convention for the Suppression of Terrorist Bombings, adopted in 1997.

2. International Convention for the Suppression of the Financing of Terrorism.

3. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation.

With regard to domestic legislation of the Bolivarian Republic of Venezuela, there are various provisions concerning the fight against organized crime and terrorism contained in the following legal instruments currently in effect.

1. Venezuelan Penal Code published in *Gaceta Oficial No. 15 Extraordinario*, 30 June 1964; Chapter IV (concerning those who incite civil war, organize armed corps or intimidate the people, articles 294 to 305).

2. Organic Law on Security and Defence, published in *Gaceta Oficial No. 1899 Extraordinario*, on 26 August 1976.

On behalf of the Government of the Bolivarian Republic of Venezuela, I am pleased to reiterate that the Government is prepared to extend or comment on any of the aspects referred to in said report, should the Counter-Terrorism Committee established by the United Nations Security Council deem that appropriate.

(*Signed*) Milos **Alcalay**
Permanent Representative

Appendix

Report submitted by Venezuela to the United Nations concerning the measures taken in implementation of Security Council resolution 1373 (2001)

Paragraph 1

Subparagraph (a)

As a Member State of the United Nations and of the Organization of American States, Venezuela has taken steps to prevent money-laundering and has introduced a series of regulations into the financial system which have led to the establishment of a system for reporting suspicious activities, systematically and otherwise; the banking system and other financial institutions communicate these reports to the Superintendencia de Bancos e Instituciones Financieras (SBIF) — the body that oversees banks and financial institutions. The reports are then analysed by the National Financial Analysis and Intelligence Unit.

The reports are stored in a database which can be consulted for the purpose of investigating individuals who move large sums of money through the financial system. In addition, foreign currency operations involving ten thousand dollars (US$ 10,000) or the equivalent in another currency are reported by the various exchange offices to the Central Bank of Venezuela; all these transactions, whether national or international, can be traced through the transfers

Aside from adopting the various regulations and recommendations of the international agencies, Venezuela has established through the National Commission Against Illicit Drug Use (CONACUID) an inter-agency network to combat legitimization of capital so as to cover movements of capital not only in the financial system but also through any other investment or mechanism that permits money to circulate in or infiltrate into the national economy. That is why the various monitoring agencies are required to report any suspicious activity.

Subparagraph (b)

The Bolivarian Republic of Venezuela and shareholders, administrators, directors and employees of the bodies regulated by SBIF, are under a legal obligation to prevent those bodies from being used to legitimize capital; to that end electronic information and data-processing systems must be established and monitoring procedures introduced so as to detect operations that might involve legitimization of capital from illicit activities and necessary enquiries must be conducted in order to inform the competent organs.

SBIF has a National Financial Intelligence Unit (UNIF) which operates as a central organ responsible for receiving, analysing, classifying and referring to the Office of the Attorney General of the Republic any reports on suspicious activities (RAS) submitted by the institutions, enterprises and individuals it oversees. It also collects financial information (both objective and subjective) to support the criminal investigation organs in any investigations they undertake.

The financial institutions have an obligation to cooperate with the Executive in meeting the specific requirements of the authorities and demonstrating a proactive

and diligent attitude vis-à-vis the administration and justice authorities against the crime of legitimization of capital. Bank secrecy, professional secrecy or confidentiality cannot be invoked when the authorities request information or when the banking institution is preparing a report on its own initiative when it suspects that legitimization of capital is involved, according to articles 214 and 215 of the Organic Law on Narcotic Drugs and Psychotropic Substances.

Subparagraph (c)

- SBIF recently published resolution No. 185-01 of 12/09/2001 establishing the need to develop modern mechanisms to follow up and monitor the flow of capital, given that the entities regulated by SBIF are liable to be used by persons engaged in illicit activities. There are a variety of banking, accessory or related operations that may be used to legitimize capital; under the Organic Law on Narcotic Drugs and Psychotropic Substances, these institutions have legal obligations as guarantors and also obligations of due diligence and good faith to prevent anyone from committing the offence of legitimizing capital, which is characterized as a crime under article 37 of the said Organic Law.
- Organic Law on Narcotic Drugs and Psychotropic Substances, articles 37, 205, 213 and 220.
- Resolution No. 185-01 dated 12/09/2001 of SBIF.
- Resolution 337-97 of SBIF concerning rules for the prevention, monitoring and overseeing of operations concerning legitimization of capital applicable to the Venezuelan financial system.
- Resolution 510-97 of the National Securities Commission concerning rules on the prevention, monitoring and overseeing of operations concerning legitimization of capital applicable to the Venezuelan capital market.
- Resolution 040-99 of the National Securities Commission concerning rules concerning transparency in the capital markets.
- Resolution 006-0598 of the emergency financial board concerning rules on authorization and operation applicable to exchange operators.
- Resolution 98-03-01 of the Central Bank of Venezuela concerning rules on exchange operators on the frontiers.
- Resolution 99-2-2-2820 of the insurance oversight body concerning rules concerning prevention, monitoring and oversight of insurance and reinsurance operations in order to avoid legitimization of capital.

In this connection, we wish to report that our legal system provides for the following possibilities, depending on the issue involved:

In criminal matters:

The first paragraph of article 218 of the Organic Code of Criminal Procedure establishes the possibility of ordering the seizing of documents, titles, stocks and sums of money held in bank accounts or safety deposit boxes or in the hands of third parties, when there are reasonable grounds for believing that they are connected with a crime that is being investigated.

The article also establishes the procedure to be followed in such cases, leaving it up to the judge to authorize such measures when requested by the public prosecutor.

Likewise, article 218 provides for the possibility for the criminal investigation police organs to ask the judge directly for the relevant order, when authorized by the public prosecutor; that authorization must be noted in the request.

Article 9 of the Criminal Investigation Police Act sets forth which are the criminal investigation police organs and names, inter alia, the public officials or employees who, in the exercise of their investigative, examination or monitoring functions under the law, are to verify or discover the commission of criminal offences.

In civil matters:

According to the provisions of article 585 of the Code of Civil Procedure, the judge may order preventive measures provided that there is a manifest risk that the judgement will not be executed, in which case article 588 of the Code states that the court may order and implement, inter alia, the seizure of property which leads, in practice, to the provisional attachment or execution seizure of money deposited in bank accounts.

In addition, concerning the division of jointly owned property of any kind and the division of community property it is possible to request and order the freezing of bank accounts (articles 779 of the Code of Civil Procedure and article 174 of the Civil Code).

In any event, in civil matters, such measures are always taken at the request of the interested party, once the judge hearing the case has verified the requirements of the Law.

In commercial matters:

The Code of Commerce provides for the possibility of freezing bank accounts and other assets held in banks or other financial institutions as a consequence of the loss of authority over property suffered by a businessman when he declares bankruptcy (articles 937 and 939 of the Code of Commerce).

It is also possible to provisionally attach property in a specific amount — this may include sums of money in bank accounts — provided that the plaintiff can guarantee that he has sufficient funds to cover the outcome of the judgement (article 1099 of the Code of Commerce); or to carry out execution seizures of assets or sums of money deposited in bank accounts or safety deposit boxes, if the plaintiff can produce an enforceable title proving that he is owed the amount he is trying to collect.

In matters concerning children and adolescents:

Articles 380, 381 and 521, paragraphs (a) and (c) of the Organic Law on the Protection of Children and Adolescents establishes that the court having jurisdiction is authorized to take steps to secure the assets of the child, adolescent or person required to provide for the child or adolescent's maintenance; these steps also include the freezing of bank accounts.

In banking matters:

The General Act on Banks and other Financial Institutions enacted in 1993 and still in effect provides, in the second paragraph of article 4, that SBIF may ask the competent courts to decide on measures to immobilize bank accounts and to prohibit the transfer or encumbering of property.

Moreover, article 4, paragraph 6, of the General Act on Banks and other Financial Institutions enacted on 13 November 2001, which will enter into force on 1 January 2002, also provides for the possibility of asking the competent organs to decide on measures to immobilize any type of account, loan or financial transaction and to prohibit the transfer or encumbering of the assets of natural or juridical persons or of their representatives, directors or shareholders.

Subparagraph (d)

Venezuela through its police organs has created specific financial investigation agencies, such as the Financial Investigation Division of the Scientific, Criminal and Criminalistics Investigation Force and the National Guard; a system for tracing and monitoring capital operations and movements from and to terrorist organizations.

Currently, the National Assembly is discussing a bill on organized crime, which will make it possible to investigate and punish legitimation of capital constituting the proceeds of other crimes relating to organized crime.

Paragraph 2

Subparagraph (a)

- Coordination of all State security agencies such as the Scientific, Criminal and Criminalistics Investigation Force, Airport Police, Department of Intelligence and Prevention Services (DISIP), National Guard, Venezuelan navy and national armed forces in order to protect border areas and the national territory.
- Interdisciplinary groups have been established to carry out intelligence work at the national level in order to evaluate, analyse and process any information obtained regarding foreign citizens or nationals that might in any way reflect irregular activities in our country, and to fully identify them and monitor their financial movements, properties, migratory movements and activities of any kind (lawful and unlawful).

Subparagraph (b)

- Security systems have been put in place in the airports as well as teams to evaluate identity documents in order to detect any anomaly in such documents that might suggest that they are forgeries.
- There is a continuing exchange of information among all State agencies and other police organizations around the world through Interpol, to check the identity of any individual who is being investigated for any reason; this exchange of information is having positive results and has led to the detention of several foreign nationals who had false documents that had been obtained in other countries.

The General Act on Banks and other Financial Institutions currently in force establishes, in article 159, that data and information obtained by SBIF in the course of its inspection, oversight and monitoring duties shall be given to the agencies referred to in the cooperation agreements signed with other countries. It also states that, if circumstances so require, the information may be provided to the bank and financial institution oversight bodies of other countries.

In pursuance of these legal provisions, SBIF has signed cooperation agreements with the Embassy of the United States of America in Caracas and with the Financial Crimes Enforcement Network (FINCEN) of the Egmont Group, to whom it has given the information contained in the present case, thereby demonstrating that there are no legal restrictions on sharing financial information with financial or other authorities with whom it has signed cooperation agreements.

SBIF has made two (2) enquiries of the national banking system, the first through circular No. SBIF-UNIF-DIF-6956, of 21 September 2001, at the request of the Office of the Comptroller of the Currency of the United States of America; the second through Circular No. SBIF-UNIF-DIF-7195, of 27 September 2001, at the request of the Financial Crimes Enforcement Network (FINCEN) of the Egmont Group. The results of these enquiries were communicated to the bodies that requested the information and to the Embassy of the United States of America in Caracas.

Subparagraph (c)

- Venezuela is aware of the responsibility involved in the fight against international terrorism and, in order to cooperate in the fight against this scourge, in addition to issuing the above-mentioned resolution concerning **rules for the prevention, control and investigation of operations concerning legitimation of capital**, has promulgated the **Act on Scientific, Criminal and Criminalistic Investigation Organs** which establishes in chapter 2, concerning Criminal Investigation Organs, article 10 that "The Scientific, Criminal and Criminalistics Investigation Force shall be the main organ in matters relating to criminal investigations".

Subparagraph (d)

- The Act on Scientific, Criminal and Criminalistics Investigation Organs, in article 11, paragraph 5, states that "To help, if necessary, the National Division for Identification and Immigration and **to cooperate in identifying, locating and apprehending of foreign nationals sought by other countries**".

- The Act on Scientific, Criminal and Criminalistics Investigations in article 11, paragraph 2, establishes, with regard to responsibilities, "To cooperate with the other citizens security organs in establishing crime prevention centres and in organizing control systems or criminalistic databases in order to share the information of the intelligence services regarding **international terrorism**".

Subparagraph (g)

- Border controls have been tightened nationwide at all international airports and ports and all foreign citizens wishing to enter or leave the country are having their documents examined more closely.

With regard to paragraph 2, subparagraphs (g), (e) and (f), and paragraph 3, subparagraphs (a), (b), (c), (d), (e), (f) and (g), the Government of Venezuela is fully prepared to cooperate without restriction in any actions, conventions, protocols and resolutions to be taken or adopted against terrorist actions; however, we request technical assistance and advice with a view to later providing the official replies to the questions raised in said subparagraphs.

All of the foregoing demonstrates that Venezuela is working actively to combat terrorism in our country and internationally. We have complied with the request of the Organization of American States regarding the establishment of a working group that would advise the Venezuelan delegation to that organization and have set up internal controls that have had positive results in that foreign nationals who were irregularly in the country have been detained but, upon investigation, have been found to have no connection with terrorist activities. However they were detained and handed over to the judicial authorities because they were in possession of forged documents.